UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO

WITH JURY DEMAND

Worthington Industries, Inc. 200 Old Wilson Bridge Road Columbus, Ohio 43085 and Worthington Torch, LLC 200 Old Wilson Bridge Road Columbus, Ohio 43085 Plaintiffs v. Aerosol Gas Company, Inc. 2440 Camino Ramon, Suite 254 San Ramon, California 94583 Defendant	:	Case No.: __________ Judge: __________

COMPLAINT

1. Plaintiffs, Worthington Industries, Inc. and Worthington Torch, LLC (collectively "Worthington" or "Plaintiffs") for its claims against Defendant, Aerosol Gas Company, Inc. ("AGC") respectfully allege as follows:

JURSIDICTION AND VENUE

2. This is a civil action against defendant for trademark infringement and unfair competition under the Lanham Trademark Act of 1946, 15 U.S.C. § 1051 et seq., (the "Lanham Act"), particularly 15 U.S.C. §§ 1114 and 1125, and related deceptive trade, consumer fraud and trademark infringement under the statutory and common law of the State of Ohio.

3. This Court has subject matter jurisdiction over the Federal trademark infringement and unfair competition claims pursuant to 15 U.S.C. §§ 1121 (a) and 28 U.S.C. §§ 1331, 1367 and 1338(a).
4. This Court has supplemental jurisdiction over the claims in this Complaint which arise under state statutory and common law pursuant to 28 U.S.C. § 1367(a), since the state law claims are so related to the federal claims that they form part of the same case or controversy and derive from a common nucleus of operative facts.
5. Venue is proper in this judicial district pursuant to 28 U.S.C. §§ 1391(b).

THE PARTIES

6. Plaintiff Worthington Industry, Inc. is a corporation organized and existing under the laws of the state of Ohio.
7. Plaintiff Worthington Torch, LLC is a limited liability company organized and existing under the laws of the state of Ohio and is a wholly-owned subsidiary of Worthington Industry, Inc.
8. Upon information and belief, Defendant Aerosol Gas Company, Inc. is a corporation organized and existing under the laws of the state of California on July 19, 2012 and is located at 2440 Camino Ramon, Suite 254, San Ramon, California 94583.

ALLEGATIONS COMMON TO ALL CAUSES OF ACTION

A. Worthington's Trademarks

9. Worthington was founded more than sixty years ago in Columbus, Ohio. Since that time, Worthington has been engaged in the manufacture, marketing and sale of industrial gas, oil and gas equipment, industrial components, alternative fuels, cryoscience, packaging solutions, propane cylinders, specialty storage tanks, steel, and retail and wholesale products, such as torches, solder, helium tanks and torch fuel.
10. Worthington is the worldwide owner of the trademarks BERNZ O MATIC, BERNZ-O-MATIC, and BERNZOMATIC & Design in black and white and color.

11. Worthington has numerous United States trademark registrations and 2 additional pending United States trademark applications for BERNZOMATIC & Design and BERNZOMATIC& Design in color.
12. Worthington has worldwide priority rights in numerous BERNZOMATIC trademarks (hereinafter the "Bernzomatic Trademarks") (see Exhibit A for United States Certificates of Registration and copies of pending applications).
13. Worthington has long been manufacturing and selling throughout the world, the United States, including Ohio, high quality and safe torches, solder and cylinders under the Bernzomatic Trademarks.
14. The Bernzomatic Trademarks are valid and subsisting and the registrations are incontestable.
15. Through longstanding use, advertising and registration, the Bernzomatic Trademarks have achieved a high degree of consumer recognition.
16. Worthington and its predecessors have continually used some form of the Bernzomatic Trademarks in connection with the sale of torches and related goods since at least as early as 1951.
17. Worthington and its predecessors have achieved significant sales volumes annually from goods bearing the Bernzomatic Trademarks.
18. The Bernzomatic Trademarks and the goodwill associated therewith are valuable assets of Worthington.
19. Worthington and its predecessors have expended significant dollars in advertising, promoting, and marketing goods featuring the Bernzomatic trademarks.
20. Due to Worthington and its predecessors' long use, extensive sales and significant advertising and promotional activities, the Bernzomatic Trademarks have achieved widespread acceptance and recognition for quality and safety among the consuming public and the trade throughout the United States.
21. The arbitrary and distinctive Bernzomatic Trademarks identify Worthington as the source/origin of the goods on which they appear.

B. Defendants' Infringing Use

22. Upon information and belief, Defendant recently (September 1, 2015) obtained two United States trademark Registrations for the mark Bluefire (hereinafter "Bluefire Registrations") (See Exhibit B for copies of Defendant's Bluefire Registrations).
23. The Bluefire Registrations are for the mark with no designs and for the goods "welding chemicals, namely acetylene, carbonic hydrates, solidified gases for industrial purposes, ethane, surface active chemical agents, and soldering fluxes" and "liquefied hydrocarbon gas for use as fuel for welding and soldering implements, portable heating devices, lanterns, and cooking implements".
24. Upon information and belief, Defendant is using a different BlueFire & Design trademark (hereinafter "BlueFire & Design trademark") on advertising for more than the goods listed in the BlueFire Registrations (See Exhibit C for copies of examples of Defendant's use of the BlueFire & Design trademark).
25. Upon information and belief, Defendant is distributing, promoting, selling and/or offering for sale goods, similar to goods sold by Plaintiffs, bearing the BlueFire & Design trademark, which is confusingly similar to Plaintiffs' Bernzomatic & Design trademark.
26. Plaintiffs sent a cease and desist letter to Defendant on September 17, 2015 (See Exhibit D for a copy of the cease and desist letter) and the letter was accepted and signed for by Yi Zheng Wei (See Exhibit E for a copy of the US Postal Service signature card).

COUNT I
TRADEMARK INFRINGEMENT UNDER 15 U.S.C. § 1114

27. Plaintiffs incorporate all prior allegations contained in paragraphs 1 through 26 in this Count.
28. Defendants unauthorized use of the BlueFire & Design trademark is likely to:
    a. Cause confusion, mistake and deception;

b. Cause the public to believe that Defendants products are authorized, sponsored or approved by Plaintiffs or that Defendants are affiliated, licensed, connected or associated with or in some way related to Plaintiffs;

c. Result in Defendants unfairly benefitting from Plaintiffs' advertising and promotional efforts and profiting from the reputation Plaintiffs have built up under the Bernzomatic Trademarks all to the substantial and irreparable injury to the public, Plaintiffs and the Bernzomatic Trademarks, and the substantial goodwill represented thereby.

d. Defendant's acts aforesaid constitute trademark infringement in violation of Section 32 of the Lanham Act, 15 U.S.C. § 1114.

29. Plaintiffs have no adequate remedy at law and have suffered and continue to suffer irreparable harm and damage due to lost profits caused by aforesaid acts of Defendant.

30. Defendant's infringing acts will continue unless enjoined by this Court.

COUNT II
FALSE DESIGNATION OF ORIGIN, FALSE DESCRIPTIONS AND REPRESENTATIONS UNDER 15 U.S.C.§ 1125(a)

31. Plaintiffs incorporate all prior allegations in this Count.

32. Defendant has, in connection with their goods, used in commerce, and continues to use in commerce a mark that is confusingly similar to one or more of Plaintiffs' Bernzomatic Trademarks.

33. Defendant has used in connection with the sale of goods, false designations of origin and false and misleading descriptions and representations, including one or marks that is confusingly similar to a least one Bernzomatic Trademark, which tend falsely to describe the origin, sponsorship, association or approval by Plaintiff of the goods sold by Defendant.

34. Defendant's use of a confusingly similar trademark was with full knowledge that consumers are likely to be confused as to the source of the goods all to the detriment of Plaintiffs.

35. Defendant's use of a confusingly similar trademark constitutes a false description and representation tending to lead consumers to believe Defendant is authorized, sponsored, affiliated or associated with Plaintiffs.
36. Defendant's use of a confusingly similar trademark was done with the express intent to cause confusion and mistake, to deceive and mislead the purchasing public, to trade upon the high quality reputation of Plaintiffs and to improperly appropriate to themselves the valuable trademark rights of Plaintiffs.
37. The Defendant's aforesaid acts constitute the use in commerce of false designations of origin and false and/or misleading descriptions or representations, tending to falsely or misleadingly describe and/or represent Defendant's products and/or services as those of Plaintiffs in violation of Section 43(a) of the Lanham Act, 15 U.S.C § 1125(a).
38. Defendant's wrongful acts will continue unless enjoined by this Court.
39. Plaintiffs have no adequate remedy at law.
40. Plaintiffs are suffering irreparable harm and damage as a result of the aforesaid acts of Defendants.

COUNT III
VIOLATION OF DECEPTIVE TRADE PRACTICES ACT

41. Plaintiffs incorporate all prior allegations into this Count.
42. Defendant has used designations on goods and/or services related to Plaintiffs goods and/or services that are confusingly similar to one or more of Plaintiffs' Bernzomatic Trademarks.
43. The trademark designations used by Defendant are deceptive, and their use is intended to pass of their goods and/or services as those of Plaintiff's, in violation of Ohio Rev. Code § 4165.01 *et seq.*
44. Defendant's use of deceptive trademark designations has caused a likelihood of confusion and misunderstanding as to the source, sponsorship, approval, or certification of the goods and/or services in question.
45. Defendant has intentionally and willfully used these deceptive trademark designations in connection with the advertising, sale, offering for sale and distribution of goods and/or services for their own financial gain.

46. Plaintiffs have suffered and continue to suffer irreparable harm and damage as a result of Defendant's acts.
47. Defendant's deceptive activities will continue unless enjoined by this Court.

COUNT IV
VIOLATION OF OHIO'S CONSUMER PROTECTION LAW

48. Plaintiffs incorporate all prior allegations in this Count.
49. The trademark designations used by Defendant on goods and/or services similar to goods and/or services offered by Plaintiff are deceptive, and their use is intended to pass off the goods and/or services as those of Plaintiffs'.
50. In using deceptive trademark designations, Defendant is falsely representing that their torch and fuel sales have the sponsorship or approval of Worthington, which they do not.
51. Defendant has committed unfair and deceptive acts in connection with consumer transactions, in violation of Ohio Rev. Code § 1354.01, *et seq.*
52. Defendant's deceptive actions will continue unless enjoined by this Court.

COUNT V
COMMON LAW TRADEMARK INFRINGEMENT

53. Plaintiffs incorporate all prior allegations in this Count.
54. For many years Plaintiffs have used the Bernzomatic Trademarks in Franklin County and throughout the rest of Ohio to identify its goods and/or services.
55. Defendant has used designations that are confusingly similar to one or more of Plaintiffs' Bernzomatic Trademarks in connection with the sale of their similar goods and/or services.
56. Defendant has intentionally and willfully used these infringing designations in connection with the advertising, sale, offering for sale and distribution of goods for their own financial gain.
57. Defendant's use of a confusingly similar trademark to Plaintiffs' Bernzomatic Trademarks to offer for sale goods and/or services is without permission, license, consent or other authorization of Plaintiffs.

58. Defendant's unauthorized use of a confusingly similar trademark on or in connection with the sale of goods and/or services constitutes Defendant's use of Plaintiffs' Trademarks in commerce.
59. Defendant's unauthorized use of a confusingly similar trademark as set for above is likely to:
    a. Cause confusion, mistake, and deception to consumers both prior and during the purchase of such goods, and post-sale;
    b. Cause the public to believe that the Defendant's goods and/or services are authorized, sponsored or approved by Plaintiffs or that the Defendant is affiliated, licensed, connected or associated with or in some way related to Plaintiffs;
    c. Result in the Defendant unfairly benefitting from Plaintiffs' advertising and promotional efforts and profiting from the reputation Plaintiffs have built up under the Bernzomatic Trademarks all to the substantial and irreparable injury of the public, Plaintiffs, the Bernzomatic Trademarks, and the substantial goodwill represented thereby.
60. Defendant's acts as aforesaid constitute trademark infringement under Ohio common law.
61. Plaintiffs are without adequate remedy at law, as Defendant's acts have caused Plaintiffs irreparable harm to their business reputation, goodwill and stature in the business community.
62. Plaintiffs are informed and believe and thereon allege that the Defendant committed the above acts oppressively, fraudulently, maliciously and in conscious disregard of Plaintiffs' rights and Plaintiffs are therefore entitled to exemplary and punitive damages pursuant to the common law of the State of Ohio in an amount sufficient to punish, deter and make an example of Defendant.
63. Plaintiffs have no adequate remedy at law and are suffering irreparable harm and damges due to lost profits caused by the aforesaid acts of Defendant.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs demand judgment against Defendant as follows:

I. That a permanent injunction be issued enjoining and restraining Defendant and their officiers, agents, servants, employees and all those in active concert or participation with them from:

a. Using any trademark that is similar to Plaintiffs BERNZOMATIC & Design trademark and that is likely to cause confusion with Plaintiffs trademarks to identify similar goods and/or services unless authorized by Plaintiffs;

b. Engaging in any course of conduct likely to cause confusion, deception or mistake, or injury to Plaintiffs' business reputation or dilute the distinctive quality of Plaintiffs' Bernzomatic Trademarks;

c. Using any colorable imitation of Plaintiffs' Bernzomatic Trademarks in connection with the promotion, advertisement, display, sale, offering for sale, manufacture, production, circulation or distribution of any unauthorized torch products or fuel as to relate or connect, or tend to relate or connect, such products in any way to Plaintiffs, or to any goods and/or services sold, manufactured, sponsored or approved by, or connected with Plaintiffs;

d. Making any statement or representation whatsoever, or using any false designation of origin or false description, or performing any act, which can or is likely to lead the public, or individual members thereof, to believe that any products distributed or sold by Defendant is in any manner associated or connected with Plaintiffs, or is sold, manufactured, licensed, sponsored, approved or authorized by Plaintiffs;

II. Directing such other relief as the Court may deem appropriate to prevent the public from deriving any erroneous impression that any products or services sold or otherwise promoted by Defendant is authorized by Plaintiffs or related in any way to Plaintiffs;

III. Requiring Defendant to recall all copies of their BlueFire & Design trademarks product advertising and packaging and surrender them to Plaintiffs for destruction;

IV. Requiring Defendant to pay to Plaintiff such damages as Plaintiffs have sustained as a consequence of Defendant's infringing act, including Plaintiffs' lost profits; and that

Plaintiffs receive treble damages for Defendant's intentional acts in accordance with 15 U.S.C. § 1117;

V. Ordering that Plaintiffs recover the costs of this action together with reasonable attorney's fees in accordance with 15 U.S.C. § 1117;

VI. Directing that this Court retain jurisdiction of this action for the purpose of enabling Plaintiffs to apply to the Court at any time for such further orders and interpretation or execution of any order entered in this action, for the modification of any such order, for the enforcement or compliance therewith and for the punishment of any violations thereof; and

VII. Awarding to Plaintiffs such other and further relief as the Court may deem just and proper, together with the costs and disbursements which Plaintiffs have incurred in connection with this action.

DEMAND FOR A JURY TRIAL

Plaintiffs demand a trial by jury of all issues triable by a jury in this case as a matter of right.

Respectfully submitted,

Worthington Industries, Inc. and Worthington Torch, LLC

Dated: 12/13/16

Cheryl S. Scotney

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VERIFICATION

On behalf of Plaintiffs Worthington Industries, Inc. and Worthington Torch, LLC, I declare under penalty of perjury that the statements contained herein are true and accurate to the best of my knowledge.

GREGORY T. SHAKLEY

By: ______________________

Title: GENERAL MANAGER